

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

HELEN N. BAUSCHEK, individually
and as Special Administrator of the
Estate of Joseph F. Bauschek,

Plaintiff,

v.

Case No. 04-C-0520(E)

OFFICER BRIAN C. SWITALA,
UNIVERSITY OF WISCONSIN
MILWAUKEE POLICE DEPARTMENT,
STATE OF WISCONSIN,

Defendants.

ORDER GRANTING SUMMARY JUDGMENT

On March 30, 2006, the court held a telephonic hearing on defendants' motion for summary judgment. The plaintiff appeared by her attorney, Lynn R. Laufenberg and the defendants appeared by their attorney, Assistant Attorney General James E. McCambridge.

Plaintiff conceded that defendants University of Wisconsin Milwaukee and State of Wisconsin are entitled to summary judgment based on sovereign immunity from liability. In making a determination with respect to defendant Officer Brian C. Switala, the court considered the following factors: (1) the totality of circumstances leading up to and following the fatal shooting of Joseph F. Bauschek on February 3, 2003; (2) a video tape from a police dashboard camera; (3) inquest transcripts; (4) deposition transcripts; (5) expert reports, photographs and other admissible evidence on file. Based on those records, the court concluded that (1) Bauschek disobeyed traffic safety laws and failed to stop while being pursued by police squads that had activated their emergency lights and sirens; (2) Bauschek was pursued on slippery streets with a light snow covering; (3) Bauschek drove through at least one stop sign, collided with a parked automobile, drove in reverse on a residential street, drove across an intersection into a private yard and collided several times with a squad car

operated by Shorewood, Wisconsin, police officer Mark Schraith; (4) Bauschek drove directly toward Officer Schraith's squad, struck the squad with his Jeep, then veered toward the passenger side of the squad instantly; (5) by those actions, Bauschek placed Officer Switala in immediate danger by driving his Jeep toward him; (6) Officer Switala fired seven shots in rapid succession in three to four seconds; (7) three bullets struck the front of Bauschek's Jeep; (8) bullets one and two hit the vehicle from a position about twelve degrees from the left of the centerline axis, whereas bullet three struck the driver-side headlight; (9) another bullet struck the driver-side A-pillar adjacent to the windshield; and (10) two bullets struck the rear driver-side of the Jeep (one hit within inches of the driver's door; the other hit the canopy just above the gas tank opening).

Officer Switala's use of deadly force was objectively reasonable under the circumstances. Therefore, he did not violate any of Joseph Bauschek's constitutional rights by firing his weapon and injuring Bauschek fatally. Further, Officer Switala is immune from liability under the circumstances of this case inasmuch as it is not clearly established that a police officer may not use deadly force when a car he and other police officers have been pursuing drives toward him on a snow-covered street.

For the reasons stated on the record and above, which constitutes the court's findings of fact and conclusions of law,

IT IS ORDERED that the defendants' motion for summary judgment is granted.

IT IS FURTHER ORDERED that this action be dismissed with prejudice and that judgment be entered accordingly.

Dated at Milwaukee, Wisconsin, this 30th day of March, 2006.

BY THE COURT

s/ C. N. CLEVERT, JR.

C. N. CLEVERT, JR.

U. S. District Judge